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**OFFICE OF PETITIONS**

In re Patent of Lakhoria et al.	:	
Patent No. 7,553,634	:	DECISION ON REQUEST
Issue Date: June 30, 2009	:	FOR RECONSIDERATION OF
Application No. 10/019,163	:	PATENT TERM ADJUSTMENT
Filing Date: December 20, 2001	:	
Attorney Docket No. AM100039	:	

This is a decision on the petition filed on August 28, 2009, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the patent be corrected to indicate that the term of the patent is extended or adjusted by one thousand two hundred thirty-one (1,231) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred thirty-one (1,231) days is **GRANTED to the extent indicated herein**.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

Patentees assert the patent term adjustment should have been increased by 488 days for delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay").

Issue #1

The first issue in this case is the number of days of B Delay.

The instant application is a national stage application of International Application No. PCT/US00/17019.

MPEP 2730 states,

37 CFR 1.702(b) indicates that a patent is entitled to patent term adjustment if, subject to a number of limitations, the Office fails to issue a patent within three years of the actual

filing date of the application (35 U.S.C. 154(b)(1)(B)). In the case of an international application, the phrase “actual filing date of the application in the United States” means the date the national stage commenced under 35 U.S.C. 371(b) or (f). *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR 56366, 56382-84, (Sept. 18, 2000), 1239 Off. Gaz. Pat. Office 14, 28-30 (Oct. 3, 2000).

The national stage commenced on December 26, 2001, in this application. Therefore, the period of B Delay begins on December 27, 2004, which is the day after the date that is three years after the national stage commenced.

Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include “any time consumed by continued examination of the application requested by the applicant under section 132(b).”<sup>1</sup> In other words, B Delay in this case does not include the time period from the date a request for continued examination was filed until the date the patent issued.

The number of days beginning December 27, 2004, the day after the date three years after the national stage commenced, until July 5, 2006, *the day before* the date the first RCE was filed is 556 days.

Patentees assert the amount of B Delay is 563 days. However, as shown above, the amount of B Delay is 556 days.

#### Issue #2

The second issue in this case is the extent to which the 556 days of B Delay should have led to an increase in patent term adjustment.

With respect to the period of adjustment for the Office taking in excess of three years to issue the patent, 35 U.S.C. § 154(b)(2)(A) limits Office delay to the sum of delay under 35 U.S.C. § 154(b)(1)(A) (“A Delay”) and B Delay to the extent such periods of delay are not overlapping.

As recognized by patentees, 9 days of A Delay overlap with the days of B Delay. In view of the 9 days of overlap, the patent term adjustment should have been increased by 547 days for B Delay.

Patentees indicate the amount of B Delay should also be reduced by 66 days. Patentees appear to assert the reduction is appropriate because 66 days of Applicant Delay overlap with 66 days of B Delay. However, the 66 days of Applicant Delay are irrelevant when determining the total amount of Office delay. The total amount of Office delay is the sum of A Delay and B Delay reduced by the number of days of overlap between A Delay and B Delay.

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<sup>1</sup> *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 56,366, 53,370-53,371 (September 18, 2000) (“Once a request for continued examination under 35 U.S.C. 132(b) and § 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and § 1.114.”)

### Conclusion

When the Office issued the patent, the Office did not increase the patent term adjustment for any days of B Delay. The patent term adjustment should have been increased by 547 days for B Delay.

The patent term adjustment is 1,290 days which is the sum of 844 days of A Delay and 556 days of B Delay reduced by 9 days of overlap and 101 (66 + 35) days of Applicant Delay.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred ninety (1,290) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Anthony Knight  
Supervisor  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**UNITED STATES PATENT AND TRADEMARK OFFICE  
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,553,634 B2

ISSUE DATE : June 30, 2009

**DRAFT**

INVENTOR(S) : Lakhotia et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 743 days.

Delete the phrase "by 743 days" and insert - by 1,290 days--